

1998 15:00 2124476405 \_\_\_\_\_\_FORWARD, JUNE 26, 1998

> Lawyer v. Client: One of the first plaintiffs in the class action suits against the Swiss banks says she has plans to dismiss her lawyer, Edward Fagan. The client, Gizella Weisshaus, wrote two letters to the United States district court judge, Edward Roman, who will preside over the matter, complaining

that Mr. Fagan did not consult her on issues including the decision to allow gypsy groups to join the class action suit, and that he permitted the other attorneys involved in the dispute "to take charge, prepare documents, [and] accrue legal fees, while our class action took a remotely back seat."

In a letter dated earlier this month, Mrs. Weisshous wrote, "I am prying, very, very hard; to retain another another another, but to date I have been unsuccessful."

Mr. Fagan did not return phone calls seeking comment, but a lawyer involved in settlement talks being conducted at Washington, Melvyn Weiss, defended Mr. Fagan, saving, "I have no idea what [Mrs. Weisshaus is] talking about. ... She couldn't be getting better representation in this matter from all of us as a group."

Mr. Weiss said he found Mrs. Weisshaus' allegation "sort of surprising." She and Mr. Fagan often appear together at press conferences, and "I always thought the two of them were quite close," Mr. Weiss said. "I think she's just frustrated. She should really be more frustrated with the other side," the Swiss banks, he said.

The settlement negotiations, being discussed under the aegis of the American State Department, have not progressed since the banks' public announcement of a "final offer" of \$600 million, which Jowish organizational leaders have rejected as "humiliating." On July 1, a group of state and local finance officers who make up the "executive monitoring committee" on the issue of Holocaustera assets being held in Swiss financial institutions will hear testimony from the negotiating parties. When asked whether sanctions against the banks were likely, a spokesman for the New York City comptroller and the head of the committee, Alan Hevesi, said Mr. Hevesi "wasn't ruling anything out."

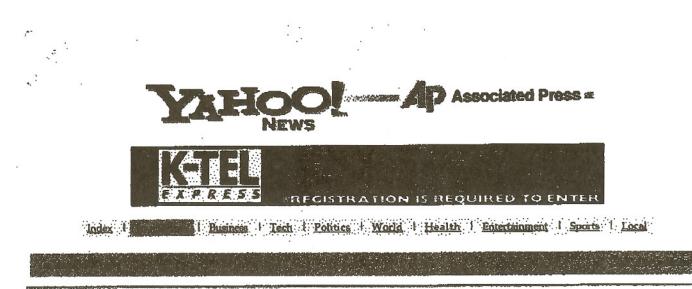
The chairman of the Senate Banking Committee and an advocate for Holocaust restitution, Senator D'Amato, said in a statement that his committee will reexamine the 1946 Washington Accords, the agreement in which the Swiss turned over \$58 million in gold to the Allies. "According to captured ledger books it is estimated that the Swiss accepted at least \$289 million in gold alone from the Germans," said a statement from Mr.

D'Amato's office. "The \$600 million settlement offer the banks have made comes nowhere near rectifying the wrong done," Mr. D'Amato said in a statement.

Jun. 01 2008 11:21AM P4

FROM :

MAGE



Saturday June 27 7:29 AM EDT

# Swiss Bank Plaintiff Accuses Lawyer

VERENA DOBNIK Associated Press Writer

NEW YORK (AP) - The lead plaintiff in a lawsuit filed by 31,000 Holocaust victims against Swiss banks to recover wartime assets has accused her attorney of lying and keeping his clients "in the dark."

Gizella Weisshaus, a 67-year-old survivor of Auschwitz, accuses attorney Ed Fagan of lying and acting unethically, according to court documents obtained Friday by The Associated Press.

"I suspect she believes there's some deal between the World Jewish Congress and me over who gets the money - and nothing could be further from the truth," Fagan responded.

Mrs. Weisshaus has written to the federal judge in the case, asking him to mediate the dispute.

While three Swiss banks are trying to negotiate a settlement with Jewish groups, Mrs. Weisshaus said she was ``trying very, very hard to retain another attorney but to date, I have been unsuccessful," according to a June 3 letter she wrote to Judge Edward Korman in Brooklyn.

That letter and one dated April 26 were both filed at the federal courthouse and faxed to the AP by a source close to the Swiss banks who requested anonymity.

The Romanian-born Mrs. Weisshaus says she and other plaintiffs are facing ``a dilemma" to which they ``have unethically been subjected to by Mr. Fagan."

She said the attorney promised that the federal suit seeking class action, filed in October 1996, would be limited to private claimants. He later added what she calls questionable claims like those by various Jewish organizations and Gypsies whose wartime personal assets were looted.

Meanwhile, she wrote, "nothing is happening on our behalf." Calls to her New York City home seeking comment were not answered Friday.

Fagan said he believes Mrs. Weisshaus is worried that Jewish groups trying to recover the dormant Swiss assets including the World Jewish Congress - ``may end up with the money. I have assured her that I'm going to do everything I can to ensure that survivors get their money."

Switzerland's three biggest banks - Credit Suisse, Swiss Bank Corp. and Union Bank of Switzerland - have offered \$600 million to settle lawsuits claiming the banks had failed to return assets from the victims' wartime accounts.

That sum was rejected by claimants and talks in Washington, mediated by Undersecretary of State Stuart Eizenstat, are continuing.

Mrs. Weisshaus said in her June letter that "the Holocaust survivors are outraged to be left in the dark" and that the

attorney "is lying to us."

Fagan said his client's concerns also may stem from "the fact that because of the negotiations and a confidentiality agreement, there are things we cannot disclose to the plaintiffs."

However, "it is their interest we are looking to protect," said Fagan, whose fee from the case is to be determined after a settlement is reached.

Margaret Zentner, 76, a German-born Holocaust survivor whose relatives had a Swiss account, said she disagrees with her co-plaintiff about Fagan.

"He is very, very ethical," she said. "I have never, ever caught him in a lie. None of us would agree with that."

Fri Jun 26 | Thu Jun 25 | Wed Jun 24 | Tue Jun 23 | Mon Jun 22 | Sun Jun 21 | Sat Jun 20

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GIZELLA WEISSHAUS 203 Wilson Street Brooklyn, New York 11211 Tel. 718-387-0026 Fax 718-387-6370

July 13, 1998

Hon. Janet Reno Attorney General of the United States Department of Justice 950 Pennsylvania Avenue NW - Suite 4400 Washington, D.C. 20530-0001

## RE: JUDGE RICHARD D. HUTTNER JUDGE/REFEREE JEROME M. BECKER

Dear Hon. Reno:

I am a Holocaust survivor and the <u>first</u> class-claimant against the Swiss Banks (Associated Press - 6/27/98 - attached)

I searched the Kings County Supreme Court County Clerk's file, found Albina Goldbetter who is also involved in fraudulent activity by above captioned and so advised her on November 7, 1997 attaching letter from Jerome M. Becker dated December 19, 1994. (copies attached, respectively)

I had a meeting with Daniel R. Alonso, Assistant U.S. Attorney on March 5, 1998 (copy attached) at which time I discussed with Mr. Alonso the matter of above captioned. I informed Mr. Alonso that I did not have an attorney of record and asked for assistance from the U.S. Attorney's Office. Mr. Alonso was aware of my fraudulent case and suggested I retain an <u>"honest"</u> attorney to continue fighting in Supreme Court and in the future, Mr. Alonso would assist me. Although feverishly trying to find an <u>"honest"</u> attorney whom I could afford to pay, I have been unsuccessful.

Albina Goldbetter forwarded a letter to Judge Richard D. Huttner dated June 16, 1998 and copied your Honor. (copy attached)

Ms. Goldbetter forwarded an additional letter to Judge Huttner dated June 21, 1998 and copied your Honor. (copy attached)

continued.....

E WX NO.

July 13, 1998

I also forwarded a letter to Judge Huttner dated July 6, 1998 <u>"FOR THE RECORD"</u>. (copy attached - with attachments)

I respectfully demand Justice which I have been denied for more than 50 years. In the pursuit of said Justice, I have shamefully deprived my 81 year old husband (also a Holocaust survivor and in failing health), my six (6) children and 28 grandchildren of my time and attention. I am 68 years old and in failing health.

May I please hear from you.

Thank you.

Very truly yours,

finila Wewban

**GIZELLA WEISSHAUS** 

certified mail

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copy: Daniel R. Alonso

.

Judge Richard D. Huttner

Jerome M. Becker, Esq. Davidoff & Malito Z-595-311-711

Z-595-311-706

Z-595-311-713

Z-595-311-715

#### **U.S. Department of Justice**

Executive Office for United States Attorneys

Suite 2200, Bicentennial Building 600 E Street, N.W. Washington, DC 20530

(202) 514-4024 FAX (202) 514-1104



Ms. Gizella Weisshaus 203 Wilson Street Brooklyn, New York 11211

Dear Ms. Weisshaus:

Your letter dated July 13, 1998, to Attorney General Janet Reno alleging misconduct by several New York state judges was referred to me for response.

The Department of Justice (DOJ) can assume jurisdiction only when there has been a violation of the federal statutes. Because your letter refers to a state case, neither the Attorney General nor the DOJ, an agency of the Executive Branch of the federal government and the federal agency dealing most closely with the criminal justice system, has jurisdiction over state cases prosecuted by state and local authorities. If you have reason to believe there has been a violation of the federal statutes, you should contact the local office of the Federal Bureau of Investigation (FBI), the investigative arm of the DOJ. The telephone number is usually located in the inside front cover of your telephone directory. If the matter is within the investigatory jurisdiction of a federal agency other than the DOJ, the FBI will refer your correspondence to the proper agency.

Additionally, the DOJ does not have the authority to review a court's decision. If you believe the decision is inappropriate, it may be challenged through the court's established procedures. You may wish to seek the advice of private counsel regarding these procedures.

Legal Counsel

FROM

I hope this information is helpful to you.

Sincerely,

Marcia W. Johnson Kelk

Legal Counsel

U.S. Department of Justice EOUSA/Legal Counsel Bicentennial Building 600 E Street, NW, Room 2200

Washington, D.C. 20530

Official Business

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Ms. Gizella Weisshaus 203 Wilson Street Brooklyn, New York 11211

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#### availability of foreign witnesses Flight 103 and the quality of still-secret, 10-year-old evidence. While U.S. prosecutors are

restricted by an accused's constitutional rights from arrest onwards, experts say Scottish prosecutors have no real check (beyond a few generally pro for-ma hearings before a magistrate) on their power to charge someone with a crime until halfway through a trial whon, as in the U.S., the defense may is dismissal on grounds that (SEE 'LOCKEBBLE' PAGE A5) 58

Milberg Weiss' \$50M mistake

The inside story of why jurors didn't buy the firm's testimony.

### BY KAREN DONOVAN

NAT IN MARCH 1990, William S. Lerach signed a complaint that named 100 defendants potentially liable to investors who lost their nest eggs in the failure of Lincoln Savings & Loan. Among the defendants was Lexecon Inc., a Chicago-based economic consulting firm that authored reports for Lincoln.

But the complaint went a step further, naming Daniel R. Fischel, a Lexecon principal, as a defendant in the suit-a decision that turned out to be a \$50 million mistake for Mr. Lerach's firm, New York's Milberg Weiss Bershad Hynes & Lerach L.L.P.

The biggest single factor for us was that they went after Fis-chel personally." says Vincent M. Clary, who served as fore-man of a federal jury that returned a \$45 million verdict on April 12 against Milberg Weiss on claims that the law firm had abused the logal system. The next day, Milbarg Weiss agreed to pay \$50 million to settle the case, rather than allow the jury to consider punitive damages.

About an hour before its verdict, the jury asked to review a July 1987 report by Lexecon responding to the Federal Home Loan Bank Board's conclusions that Lincoln had violated savings-and-loan regulations on risky investments. In this "safe and sound" report, as Milberg Weiss' defense lawyers called it, Lexecon, after its own study, concluded that Lincoln was "safer than comparable thrifts." SEE 'MILBERG' PAGE ALO

Milberg misjudged punies danger

['MILBERG' FROM PAGE AI]. The jury's request alarmed Mr. Fis-chel's legal team. "I was a little worried," admits Alan N. Salpater, of Chicago's Mayor, Brown & Platt. But the jurors Mayor, Brown & Platt. But the decu-

highlights

Scots<sup>2</sup>-law

Bombing prosecutors

more powerful than

U.S. counterparts.

wayer, prown & rian, son the jurors were only making sure that the docu-ment did not bear Mr. Fischel's name as

"The majority of us thought it would bave been fine to sue Lexecon, " says Mr. Clary, who described Lexecon's work for

Clary, who described backeton's work for Lincoln'ss "perhaps suspect." The jurors concluded that Milberg Weiss added Mr. Fischel to the Lincoln

Weiss added Mr. Fischel to the Lincoln Complaint "for all the wrong reasons." Says Mr. Clary. Mr. Fischel was the defonse experi al a 1988 trial at which Mr. Lerach asked for \$200 million in damà.

ages, which would have been the highest award of its kind. The jury returned a de-

At the time of the Lincoln suit, Mr. lense verdict. At the time or the Lincoin suit, par. Lerach allegedly told colleagues on the plaintiffs' team that he was suing Lexe-con to "put the little fucker out of busi-ness." The California lawyer who re-colled the Lerach connect refused to called this Lerach comment refused to testily at the trial, leaving Mr. Fischel's tesory as the trial, leaving Mr. Fischel's lawyers to read the testimony from his deposition to the jurors. On the witness stand, Mr. Lerach donied he said this.

But the trial's final testimony con-tradicted Mr. Lerach with high drama. On April 8, the plaintift' team played excarpis from the videotaped deposition of Michael S. Sherman, a lawyer who prac-

liced at a firm that shared office space with Milberg Weiss in San Diego in the early 1990s.

The Mayer Brown lawers did not know that Mr. Sherman existed until the last days of the five-week trial. Mr. Sherman had read an April 5 account of the proceedings in this newspaper and had told newspaper and had the Angeles' Al-one of his partners at Los Angeles' Al-schuler, Grossman, Stein & Kahan L.L.P. that he had evidence relevant to the case. The partner contacted Mr. Salpeter, a close friend. On the video seen by the jurors, Mr. Sherman testified about a Mil-

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the Lincoln case to que tion his credibility. Sever Milberg partners at U party, including Mr. Lerach. "made stat ments to the effect that 'that Utile fuck

that he wanter w ---the plaintiff's business, but the jury didn't buy it.

berg Weiss party he at tended after the firm wo:

a \$100 million verdict in class action against Appl

Class action against Appl Computer Corp. Mr. Fit chel had been the defens expert, and Milberg raise

"It was highly dramatic and very, vi effective." Says Mr. Clary of the video thought that was damning.

Throughout the trial, another piec evidence was also on jurors' minds. Mr. Clary: a March 21, 1990, memo U Milberg lawyers from Leonard B. Sir

a partner in the firm's San Diego ol Mr. Fischel's lawyers called this d ment the "battle-plan memo," remir the jury that Milberg never turned it to the plaintiffs, who learned of it b posing a former Milberg associate. In the memo. Mr. Simon noise

firm had "discovered some work" Lexecon did for Lincoln and was a Lexecon as a defendant in the cla tion. The information should t tremely useful in cross examining el or others from the firm," he wro el or others trom the nrm, " he wrd "We couldn't get [the meino] our minds," says Mr. Clary. The t introduced no documentation al

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FROM

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ERUSALEM --- Put the words "Holocaust" and "money" together in the same sentence and you've created a volatile mix, leaving you in a quandary between morality and practicality.

So it was no surprise last week at a news conference publicizing the \$1.25 billion Swiss banks case that the follow-up questions focused largely on one issue: how much will the lawyers be. paid for their services?

The criticism over this issue is easy enough for anyone to argue. When dealing with compensation for Holocaust survivors - whether it regards banks; insurance companies, slave labor or property - how can anyone take mon-ey that should go to the victims?

Furthermore, even if one concedes that lawyers working on the case de-serve some remuneration for their time, where is the line drawn between enough and too much?

Many have weighed in on the debate, including Jewish organizations like the Anti-Defamation League and the World Jewish Congress, as well as Holocaust survivor groups.

In March, the American Gathering of Jewish Holocaust Survivors passed a resolution protesting efforts by some lawyers for the amount in fees they were seeking.

"While we fully support and agree with the principle of expense reimburs ment to the attorneys involved, the awarding of legal fies is simply incom-prehensible to survivors, since it comes from the very assets stolen from us under circumstances which have no historical precedent;" said the resolution.

Roman Kent, chairman of the group, went farther in his criticism, writing shortly thereafter: "Who asked the lawyers to demean the memory of the Holocaust so that at the end of our lives the wholesale destruction of the Jews will be remembered more in terms of dollars and cents and the 'glitter of gold' rather than the murder of six million innocent men, women and children?

"Yes, We survivors would appreciate the help shoupotent attorneys, pro-vided the glatter of gold' be put in the background and the legacy of the Holocaust presented in the proper moral perspective and their work is, just as ours, preformed on a pro-board pasie."

Irwin Levin, one of the 10 attorneys on the executive committee in the Swiss case who co-chaired last week's news conference, agrees that the Holocaust should not be remembered in terms of money. On the other hand, he argues, attacks by Kent are misguided in that they blur the line between moral issues and legal and monetary ones. The argument, I think, that is made

by Roman Kent and others is that if neone steals my wallet and they also kill me, that to go and ask for the mon-ey back that they took from my wallet denigrates the idea that they killed me," says Levin. "I would suggest that the two are separate and distinct, that the legacy of the Holocaust is not money, it's the death of 11 million people - six million Jews, of which one-and-a-half million were Jewish children. But there also is a debt owed, and it ought to be paid to survivors."

At a recent meeting in Germany, in a slave-labor case Levin has brought against German industry and banka, Kent became angry when the discus-sion focused on the legal closure of the matter.

"Roman Kent's concern, validly, is an.

HOLOCAUST V EXI SE Attorney Melvyn Weisis speaks at a press conference held to give settle

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# awyers And The Holocaust

LGELERNT ER Attorneys handling cases dealing with compensation for survivors are at the same time battling criticism over taking money for their efforts

issue which he referred to as moral closure. It is there that I depart from Mr. Kent, respectfully, because in my view, the idea that we are talking about le-gal closure for monetary obligations will never and can never amount to moral closure. There will never be moral closure for the Holocaust, because how can there be?"

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Abraham Cooper, associate dean of the Simon Wiesenthal Center, which was involved in the Swiss banks case, says lawyers who can work for free would be the ideal situation, but not always a realistic one.

Not every lawyer who has a good idea or who can represent his clients in a good way can afford to go pro bono, Cooper says. "But there is also no doubt that our initial lawsuit in the Swiss thing was enhanced from a moral point of view by virtue of the fact that you had these guys rolling up their sleeves and going into it and spending hun-dreds of thousands of hours pro bono. On the other hand, it's not a sin to be compensated."

Moreover, Cooper says, it's the very presence of the lawyers that has achieved results.

Whatever victories there have been and will be in terms of slave labor is and will be in terms of slave labor is an American victory based on Ameri-can law, as well as the motivation, the genius and the brilliance that a lot of people put into it to cobble this stuff. people put into It to counte the and the The only reason the Swiss were at the table, the only reason these guys in the other cases) are quaking is because lawyers came in and things moved forward.

"I'm not giving them all the credit, but there's no question [that] without [lawyers getting involved in] these is-sues, there wouldn't be a lot to be talking about in the year 1999." Nevertheless, Cooper says that a certain aware-ness by the lawyers should be brought to bear on the issue because of its very nature

"What they charge may be par for the course for class-action suits, but there are also lawyers going to the survivor community and saying 'we want to rep-resent you.' There's nothing wrong with lawyers being compensated for their work. On the other hand, when dealing with this issue, and with the survivor community, it would be nice to see more sensitivity from certain lawyers to the victims.

Levin says none of the hundreds of individual survivors he has spoken with has ever voiced any criticism against lawyers taking a fee, and that it only comes from institutional organizations. One of his clients is Eva Kor, a Holocaust survivor who has filed a class-action suit against Bayer for medical experiments conducted in Auschwitz.

"I am eternally grateful to any lawyer who is willing to work as bard as Irwin and the other attorneys are work-ing on my behalf and behalf of the other survivors," Kor said from her home in Terre Haute, Indiana. "We could never afford to hire somebody and pay them — I am very aware that people cannot work without getting paid. The fact that they are going to make some money, that is perfectly OK, that is the way the world is treating everybody.

"I do not know, what their expenses are, but I'm sure it's more than a couple of thousand dollars. These lawyers are picking it up without even knowing when they started out if they would ever get paid."

Those who concede that lawyers should be paid are overwhelmed by the anound be pain are overwhelmed by the amount being tossed about. The 10 law-yers involved in the Swiss case have agreed not to request more than 1.8 per-cent, which would still mean over \$20 million is here the set of million in legal fees. But while that sounds high to the layman, it's actually quite low for such class-action cases.

FAX NO.

you have a federal judge who lives an swims in a reality," Cooper says, "so that the figures may seem completely outrageous to the sverage guy in the street like us, but not in the American legal system."

Lawyers in standard civil litigation usually receive one third of money recovered. The Swiss case, however, was filed under separate rules governing civil-rights cases, and in those cases there's a sliding scale of between five percent and 17.25 percent.

Levin says that, of the 1.8 percent in legal fees that are being sought, "if the judge gave 100 percent of that which was requested, it would be to my knowledge the lowest percentage of fees ever awarded for a case of that size in the history of American litigation

Lavin is involved in a few ongoing cases, including ones against German in-dustry, the Bayer Corporation, for medical experimentation; slave-labor cases against companies like Siemens, Krupp, Ford, Volkswagen and others; German banks; and French banks, What irks him is the misdirected criticism that comes from some of the Jewish organizations

Tin afraid that the last sound bite of this century will be that the Holo-caust was all about property," Abraham Foxman, national director of the ADL, has said. "And I don't want to see an industry of ambulance chasing law-yers building out there. I want to see closure. Six million died because they were Jews. It was an ancillary horror that they were robbed."

Equally vocal has been Elan Stein-"It is our position that lawyers should not be making a profit from this. We are opposed to lawyers' fees being paid out of these proceeds, which were intended for Holocaust survivors' benefit."

Levin dismisses such criticism, saying it's easy for organizations to pick on lawyers instead of directing their attention at the goal, or the heretofore missed opportunities. "The WJC has many accomplish-

ments under its belt, but one of the accomplishments that it does not have is obtaining money from the Swiss or the Germans or from others, for slave labor, for the banking cases, for all the money that we have now gotten, says Levin, his voice rising. "We worked hand-in-hand against the Swiss banks with the World Jewish Congress, [but] they had 50 years to try and get that mon-ey before we filed the lawsnits, and they couldn't do it. Remember, the Swiss swore that they would never pay more than \$600 million, and they ended up paying \$1.25 billion."

There is, however, one particular Jew ish lawyer who has been strongly criti-cized, not because he is taking money from Holocaust survivors for arguing their case, but because he is arguing against their case.

Kenceth Bialkin is a well-known attorney who is representing the Gener-ali insurance company in the delibera-tions now taking place in the Eaglebur-ger Commission. He thus finds humself sitting across the table from represen-tatives of Jewish organizations and the State of Israel, advocating for the lowest amount that insurance companies ahould pay survivors.

Bialkin ian't just any Jewish lawyer; he has been a prominent and influential organizational leader for decades, including stints as head of the Anti-

# By CYNTHIA R. FAGEN

V.Y. POST Awa

If anyone told Melvyn Weiss it was time to slow down after a lifetime of good deeds because he's turning 68, it would be adding insult to injury - and boy, does he know both: He's a top class-action lawyer.

Weiss, who hails from The Bronx, loves to fight for the underdog.

"I'm just a city boy," he said modestly, sitting in the Midtown office suite of his law firm, Milberg Weiss Bershad Hynes and Lerach LLP.

Whether he's working pro bono and winning \$1.25 billion from Credit Suisse Group and UBS for Holocaust survivors, or suing Wall Street banks for billions for manipulating the markets, Weiss makes corporate Goliaths tremble when he comes calling.

"I have always had a belief that if you have been successful in life you have an obligation to pay back to the community in a substantial way," he said.

And that he has. Along with his wife, he has created the Melvyn and Barbara Weiss Public Interest Foundation at New York University Law School. It provides funds for graduates to help pay back their stu-

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JUST CAUSE: Attorney Melvyn Weiss' fund helps law students do public-interest work. Graham Morrison



dent loans in exchange. for taking lower-income public interest jobs. As a young lawyer straight out of NYU Law, Weiss pioneer the un-charted terrain of class. action law. That was

more than 40 years ago. Brigitte Employee Bloch has given him the nod for the Liberty Medal Lifetime Achievement award

"He has just helped so many people. He's the kind of guy you always want to be around," she said. .

Nomination form

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